IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 562 (MS) OF 2006

Kauloo @ Kawalu S/o Sri Sita,
R/o Village Bhagchuri, Tehsil Khatima,
District Udham Singh Nagar. .....Petitioner

Versus

1. First Additional District Judge, Udham Singh Nagar (Rudrapur).
2. Jeeut, S/o Shri Bhagpat,
   R/o Village Bhagchuri, Tehsil Khatima,
   District Udham Singh Nagar.
3. Smt. Ramrati, W/o Shri Jeeut,
   R/o Village Bhagchuri, Tehsil- Khatima,
   District- Udham Singh Nagar. .....Respondents.

Dated: 01.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.S. Bora, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 02.05.2006 passed by 1st Addl. District Judge Udham Singh Nagar (Rudrapur) in Misc. Civil Appeal No.23 of 2005 Jeeut Vs. Devnath and others.

Briefly stated, a suit was filed by the plaintiff/respondents praying for permanent injunction. Along with the suit, the plaintiff has also preferred an application for temporary injunction under Section 39 Rule 1 of the Code of Civil Procedure.

Civil Judge (Jr. Division), vide order dated 31st March, 2006 has rejected the said application on the ground that the

plaintiff has failed to prove prima facie case, balance of convenience, and irreparable injury.

The plaintiff went in appeal. The appellate Court has granted the injunction. Against the grant of injunction, present writ petition has been filed.

Since the appellate Court has recorded the prima facie case, balance of convenience and irreparable injury in favour of the plaintiffs and has found that the canal being source of irrigation for the plots of the plaintiff goes to his own land.

I , therefore, find no infirmity in the order passed by the appellate Court.

However, the Suit No. 14 of 2005 jeeut & another Vs. Devnath and another is expedited. It is directed that the said suit shall be disposed of within a period of six months from the date of production of the certified copy of this order.

Writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

01.07.2006
Rathour